



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

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Via Email

Our File Numbers: LEX-500078989, LEX- 500079577
LEX-500080788, LEX-500076706

URGENT – FOR June 20 CMC at 9:30 am ET

June 19, 2022

Prothonotary Tabib
c/o Federal Court Registry
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

Dear Prothonotary Tabib:

**Re: Shaun Rickard and Karl Harrison v AGC, T-1991-21
The Honourable A. Brian Peckford et al v AGC, T-168-22
Nabil Ben Naoum c PGC, T-145-22
L'Honorable Maxime Bernier c PGC, T-247-22**

It is the Attorney General of Canada's (Canada) understanding that the purpose of the case management conference (CMC) is to address scheduling issues relating to upcoming motions.

In addition to addressing these matters, I write this letter on behalf of Canada to request an extension of the Respondent's September 2, 2022, deadline to serve and file the Respondent's record, fixed by your May 10, 2022, Order, to, at minimum, no earlier than October 7, 2022. The Applicants are opposed to this request. Canada recognizes that granting this request for an extension of time will necessarily result in a need to reschedule the hearing that is currently scheduled to commence on September 19, 2022, for a duration of five days. Canada makes this request based on: (1) the fact that the urgency to have these applications heard and determined has, at a minimum, been significantly reduced; (2) the information just received from the Translation Bureau that they will require a minimum of 18 business days to prepare an official translation of Canada's Memorandum of Fact and Law; and (3) the recent unexpected need to reassign a new senior lead counsel for these applications. The scheduling for the upcoming motions also has the potential to impact the deadlines fixed in your May 10, 2022, Order. I will address each of these points below, starting with the alleviation of the urgency that, until now, has driven the gruelling schedule on which these matters have proceeded to date.

1) No urgency now that impugned measures are now repealed

The Applicants' applications for judicial review challenge the air and rail passenger vaccination mandate. As of June 20, 2022, the Orders in the air and rail modes imposing the vaccine mandate will be repealed. For the air mode, [*Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3*](#), which was made on June 14, 2022, under the *Aeronautics Act* includes a provision at s. 36 specifying that it "ceases to have effect at 00:00:01 Eastern daylight time on June 20, 2022." In the rail mode, [*Ministerial Order 22-02, Order Ending Vaccination Mandates for Passengers and Employees*](#), which was made on June 17, 2022, under the *Railway Safety Act*, repeals Ministerial Orders 21-07.3 and 21-09.2 effective 00:00:01 Eastern daylight time on June 20, 2022. Thus, at the time of the case management conference on June 20, 2022, the measures that the Applicants challenge in their applications for judicial review will no longer be in effect. The Applicants will now be able to travel by air or rail, regardless of their vaccination status.

At the case management conference on June 15, 2022, the Applicants argued that these applications remain urgent because, at the press conference where the government announced the "suspension" of the vaccination mandates, the Minister of Transport indicated that the government may reinstitute a vaccine mandate in the Fall if necessary, based on the COVID-19 situation at that time. However, the Minister of Transport has also stated that he hopes the government never has "to bring it back."¹ Whether or not this may occur is entirely speculative. There is no evidence before the Court as to if or when a vaccine mandate may be re-introduced, and in what form, or as to the evidentiary foundation on which that decision would be based. Moreover, given the importance of facts to a proper *Charter* analysis, should new Orders be implemented in the future, the *Charter* validity of the Orders would necessarily need to be measured against the form of those orders and the facts in existence at that time, not the factual matrix underlying their first implementation on October 29, 2021, or the factual evolution leading to their repeal as of June 20, 2022.

2) Delay for an official translation of Canada's Memorandum of Fact and Law

The second reason for Canada's request for an extension of time is that, on June 17, the Translation Bureau confirmed that it would require 18 business days to prepare an official translation of Canada's Memorandum of Fact and Law, based on the length of the document and the estimated word count (see attached email). The current September 2, 2022, deadline to serve and file the Respondent's record was fixed based on an allowance of 30 days for Canada to complete its Memorandum of Fact and Law plus two weeks for translation. We now know that obtaining an official translation will actually take a minimum of three and a half weeks, after which some additional time will be required to allow counsel to review for accuracy. Given that Canada's Memorandum of Fact and Law is responding to four applications, raising myriad issues,² in light of the now known time required for translation, the current deadline is unreasonable. To the extent that it might be suggested that less than 30 days be allocated for Canada to prepare the Respondent's Memorandum of Fact and Law, that proposition would not be reasonable given the need for internal review, including review at senior levels of

¹ Interview on *Rosemary Barton Live*, aired June 19, 2022.

² Collectively, the Applicants argue that the vaccine mandate(s) are *ultra vires* the *Aeronautics Act*, RSC, 1985 c A-2, invalid due to errors in law/jurisdiction/fact/mixed fact and law, violate their ss 2(a), 2(b), 2(c), 2(d), 3, 6, 7, 8, and 15 *Charter* rights, violate ss 1(a), 1(b), and 2 of the *Canadian Bill of Rights*, SC 1960 c 44, violate Articles 7, 12, 18, and 26 of the *International Covenant on Civil and Political Rights*, and violates s. 81.1 of the *Canada Elections Act*

government. Given the Applicants' insistence that these applications raise matters of great public importance, fairness dictates that Canada be provided with a reasonable deadline, commensurate with the volume of the evidence and the scope of the issues raised by the Applicants, particularly now that the urgency has been alleviated by the repeal of the impugned measures.

3) The recent unexpected need to reassign a new senior lead counsel

As the lead counsel on these files and an officer of the Court, during the case management conference on June 15, 2022, I advised the Court that on June 9, 2022, I received an August 9, 2022, surgery date for a full hip replacement, which will be followed by an extended recovery period. Due to pre-operative requirements, I will be on leave for my surgery starting August 2, 2022. My medical leave results in a need to assign a new senior lead counsel on these applications (in addition to covering my other file responsibilities). Not only will this require that the Department of Justice identify a new senior lead counsel for these applications, it will also require finding capacity within the Department of Justice to manage that counsel's other matters. Additionally, any newly assigned senior lead counsel will need time to review and digest all of the evidence in these matters, which collectively includes 35 affidavits, 15 of which are from expert witnesses, and transcripts from the cross-examinations of 23 witnesses by the time cross-examinations are complete. This will be a substantial undertaking for that newly assigned senior lead counsel.

With respect to the statement made at the June 15, 2022, case management conference that the Department of Justice (DOJ) is the largest law firm in Canada, the size of the Department does not mean that it necessarily has available capacity. Indeed, the opposite is true at this time; a fact that was recently communicated by the Justice representative (Ms. Catherine Lawrence) at the June 8, 2022, Federal Court/Federal Court of Appeal Bench and Bar Liaison Committee meeting. Again, as an officer of the Court, I can advise that the DOJ representative informed the Courts that DOJ litigators are dealing with very high volume of work and that counsel are over extended as a result of the impact the last two years have had on their professional and personal lives.

For all of these reasons, Canada requests an extension of the Respondent's September 2, 2022, deadline to serve and file the Respondent's record, fixed by your May 10, 2022, Order, to, at minimum, no earlier than October 7, 2022.

Upcoming motions

Regarding scheduling issue related to upcoming motions, the parties have not had an opportunity to discuss the scheduling of these motions, or their potential impact on the existing litigation schedule. The upcoming motions that will (or may) need to be discussed at the case management conference include:

- The *Rickard and Harrison* Applicants' proposed a motion to compel answers to questions refused by one of Canada's witnesses (Ms. Jennifer Little) on the basis of cabinet confidentiality;
- Canada's motion to dismiss the above noted applications on the grounds that they are now moot. Canada intends to file its motion by no later than June 24, 2022; and
- A motion, in writing in accordance with Rule 369, to adduce fresh evidence to address an unexpected and, in Canada's view, unreasonable response to an undertaking in the *Peckford et al* application, which Canada intends to file as early as possible.

Presumably, the *Rickard and Harrison* Applicants' proposed motion will need to be decided before these Applicants produce their record.

Given that there is no longer any urgency and the significant resources required for the parties to produce their respective records, it is Canada's position that Canada's motion to dismiss the Applicants' applications on the grounds that they are now moot should be determined before the parties produce their records on the merits. The latter do not need to be produced to determine the former.

All of which is respectfully submitted.

Sincerely,

A large black rectangular redaction box covering the signature of Sharlene Telles-Langdon.

Sharlene Telles-Langdon
Senior General Counsel

cc.: Sam A. Presvelos and Evan A. Presvelos, Counsel for Rickard and Harrison
Keith Wilson, Q.C., Allison Kindle Pejovic, and Eva Chipiuk, Counsel for Peckford et al
Samuel Bachand, Counsel for L'Honorable Maxime Bernier
Nabil Belkacem B.-N.

Encls. Schedule of cross-examinations of Canada's 16 witnesses;
Email exchanges between Marla McKitrick, Senior Paralegal, and officials at the
Translation Bureau, from May 17, 2022 to June 17, 2022.

CROSS-EXAMINATION SCHEDULE – CANADA'S AFFIANTS

Date	Witness
May 31 at 10:30 am (Full Day) and June 1 at 10:30 am to 1:30 pm (Half Day)	Lisa Waddell
June 1 at 2:30 pm to 5:30 pm (Half Day) and June 2 at 10:30 am (Full Day)	Dr. Peter Liu
June 3 at 10:30 am (Full Day) <i>CONTINUED TO June 6 at 10:30</i>	Celia Lourenco
June 6 at 10:30 am (Full Day) and June 10 at 10:30 am to 1:30 pm (Half Day) AMENDED TO: June 6 at 4:00 pm for one hour; cancelled June 10 not needed	Julie Laroche
June 7 at 10:30 am (Full Day) and June 8 at 10:30 am to 12:30 pm / 2:00 pm to 5:30 pm (Full Day) <i>Continuation on June 27 at 8:00 am – 10:00 am Possible continuation on June 29 (PM-after Owen Phillips)</i>	Dr. Dawn Bowdish
June 9 at 10:30 am (Fully Day) and June 10 at 2:30 pm to 5:30 pm (Half Day) <i>Continuation on JUNE 17 AT 11:30 (Full Day)</i>	Jennifer Little
June 13 at 10:30 am (Full Day) and June 14 at 10:30 am (Full Day)	Dr. Jason Kindrachuk
June 15 at 10:30 am (Full Day)	Dr. Philippe Guillaume Poliquin
June 16 at 10:30 am (Full Day) and June 17 at 10:30 am to 1:30 pm (Half Day)	Dr. Elizabeth Harris
June 20 at 10:30 am (Full Day) and June 21 at 2:30 pm to 5:30 pm (Half Day)	Dr. Vanessa Poliquin
June 23 at 10:30 am (Full Day) and June 24 at 10:30 am to 1:30 pm (Half Day)	Dr. Eleni Galanis
<i>June 24 at 10:00 am (Full Day)</i> June 27 at 10:30 am (Full Day)	Mario Boily
June 28 at 10:30 am (Fully Day)	Dr. Tyler Brooks
June 29 at 10:30 am (Full Day)	Owen Phillips
June 30 at 10:30 am (Full Day)	Michael DeJong

All times expressed in Eastern Time Zone.